

Remarks

Applicant respectfully submits new claim 31 for consideration. It is respectfully asserted that claim 31 is distinguishable from all of the prior art disclosures.

Claim Rejections Under 35 U.S.C. §102(b)

Claims 1, 2, 6, and 9-30 have been rejected under 35 U.S.C. §102(b) as being anticipated by Kelly et al. U.S. Patent No. 6,006,482 hereinafter referred to as "Kelly." Applicant's claim 1 includes in part:

"an insulation layer supported by said roof deck, wherein said insulation layer is more compressible and resilient than said roof deck;" as well as "a frangible energy absorbing layer supported by said insulation layer;"

Applicant respectfully asserts that Kelly does not teach an insulation layer that is more compressible and resilient than a roof deck. In section 2 of the Office Action, Examiner equates Applicant's insulation layer to the "layer below layer 14" in Kelly's Figure 11. Referring to Kelly column 11, lines 55-56, the layer 14 (which in Kelly is actually the insulation layer) "is placed upon an old roof structure." Thus, "the layer below layer 14" is an old roof deck. Applicant's amended independent claims 1 and 17 claim an insulation layer that is more compressible and resilient than a roof deck. Since the layer below layer 14 is (at least partially) a roof deck, it cannot not more compressible and resilient than a roof deck, and Kelly does not teach or suggest it as such.

As Kelly fails to teach every aspect of Applicant's amended claim 1, either expressly or impliedly, Kelly does not anticipate claim 1. For at least the foregoing reasons, it is respectfully submitted that claim 1, and claims 2, 6, and 9-16 dependent therefrom, are patentable over Kelly. In addition, because independent claim 17 has been amended to include "a roof insulation layer that is more compressible and resilient than the roof deck" it is also not anticipated by Kelly for the same reasons as claim 1. Thus, the claims 18-30 that depend from claim 17 are also patentable over Kelly.

Claim Rejections Under 35 U.S.C. §103

Claim 3 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Kelly. Claims 4 and 5 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kelly in view of Nurley et al. U.S. Patent No. 6,250,036 hereinafter referred to as "Nurley." Claims 7 and 8 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kelly in view of Bennett et al. U.S. Patent No. 4,226,071 hereinafter referred to as "Bennett." Being that claims 3, 4-5, and 7-8 depend from amended claim 1, for at least the reasons set forth in the 102 section above, all of the elements of these claims are not taught or suggested by Kelly, the combination of Kelly and Nurly, or the combination of Kelly and Bennett. Thus, Applicant respectfully asserts that claims 3, 4-5, and 7-8 are patentable over Kelly in view of Bennett and Nurly.

All of the rejections are herein overcome. No new matter is added by way of the present Remarks, as support is found throughout the original filed specification, claims, and drawings. Notice of Allowance is respectfully requested.

If the Examiner has any questions regarding the instantly submitted response, Applicant's attorney respectfully requests the courtesy of a telephone conference to discuss any matters in need of attention.

If there are any additional charges with respect to this response or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorney.

Respectfully submitted,  
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